IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3029 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHEDNRABHAI DESAIBHAI THAKARDA

Versus

DISTRICT MAGISTRATE

Appearance:

MR HM PRACHCHHAK for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 13-3-2000 passed by the District Magistrate, Vadodara and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned APP for the State. Also perused the material on record. According to learned advocate for the petitioner, there are five offences registered against the petitioner and last offence was registered on 31-12-1999 with Vadodara Taluka Police Station as Prohi.No.III 717 of 1999 under Sec.65(f) of Bombay Police Act. He has raised the contention regarding the delay in deciding the representation. According to him, the detenu has submitted a representation through jail on 4-4-2000 which has been sent by the jail authority to the authority on 17-4-2000 and communication has been sent to the petitioner on 26-4-2000. Relying upon the same, he has argued that there is a delay in deciding the representation. Learned APP has fairly admitted the same.

4. In the instant case, it appears that though representation has been sent through jail on 4-4-2000, the jail authority has forwarded the same on 17-4-2000 to the authority and the communication has been sent to the petitioner on 26-4-2000. So, there is a delay in deciding the representation. It has been held by the Apex Court in a case of Kundanbhai Dulabhai Shaikh Vs. District Magistrate, Ahmedabad and Ors. reported 1996(3) G.L.R. 314 more particularly at head note (B) as under:

> "Constitution of India, 1950 - Art.22(5) Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 (VI of 1980) - Sec.8 - Representation of detenu must be disposed of expeditiously - If delay is not satisfactorily explained detention order would be fatally affected."

5. In the present case, no explanation has been putforward by the authority explaining satisfactorily the delay caused in this case. As representation of the petitioner has not been decided by the authority in time, the rights guaranteed under Article 22(5) of the Constitution of India are violated which make the order of detention illegal. Therefore, in view of the above judgment of the Apex Court, the continued detention of

the detenu is bad and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

6. The petition is allowed. The impugned order of detention dated 13-3-2000 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Mahendrabhai Desaibhai Thakarda is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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